In the High Court of Judicature at Madras

Dated : 23.7.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN

and

The Honourable Mr.Justice P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.266 of 2007

The Commissioner of Income Tax
Trichy. .. Appellant/Appellant

Vs

K.S.Mangudi
Kallur Village, Thirumayam Taluk
Pudukkottai. .. Respondent/Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'D' Bench dated 16.6.2006 made in M.P.No.319/Mds/2005 in I.T.A.No.1970/Mds/2002 for the assessment year 1992-93. against the order of the Commissioner of Income Tax (Appeals) Tiruchirappalli for the Assessment year of 1992-93 in ITA.No. No.28/2001-2002 dated 18.10.2002 and against the order of the Income Tax Office, Ward 1 (2) Pudukkottai in pan/GIR.No.2542-M/1 (2) PDK dated 21.3.2001 respectively.

For Appellant : Mr.J.Naresh Kumar
Junior Standing Counsel (Income Tax)

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The assessment year is 1992-93. The assessee is a dealer in forest produce. The assessing officer passed an assessment order under Section 143(3) read with under Section 147 of the Income Tax Act on 21.3.2001 for the assessment year 1992-93 by determining the assessee's taxable turnover for the relevant assessment year at Rs.1,52,080/- as against the returned income of Rs.31,080/-. Against that order, the assessee preferred an appeal before the Commissioner of Income-Tax(Appeals) and the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Commissioner of Income-Tax (Appeals) dismissed the appeal. As against the said order, the assessee preferred an appeal before the Income Tax Appellate Tribunal and the Tribunal allowed the appeal by following the decision of this court in the case of COMMISSIONER OF INCOME TAX VS. M.CHELLAPPAN (281 ITR 444) and quashed the order of assessment by holding that the notice issued by the assessing officer is invalid. That order has not been agitated further by the Revenue by filing appeal. However, the Revenue without resorting to the regular procedure of filing appeal thought it fit to file a miscellaneous petition in M.P.No.319/Mds/2005 under Section 254 of the Act before the Income Tax Appellate Tribunal, for rectification of the mistake apparent on the face of the record. That application came to be dismissed by the Tribunal. The correctness of the same is now canvassed by filing the present appeal before this Court under Section 260A of the Income Tax Act. The substantial question of law formulated for entertainment of the Appeal is as follows:-

> "Whether on the facts and in the circumstances of the case, the Income-Tax Appellate Tribunal was right in law in dismissing the Miscellaneous Petition filed by the Revenue, even though the notice issued to the assessee through the postal authorities on 12.8.1999 which is well within the time limit prescribed statutorily ?

2. We heard the learned counsel for the Revenue and also perused the order of the lower authorities.

3. Nowhere before the lower authorities, the point that the notice issued to the assessee was served on the assessee through the postal authorities on 12.8.1999 has been taken. The Tribunal, the ultimate fact finding authority has taken the view that the notice issued by the assessing officer is invalid . If the Revenue is having material to sustain their case, they would have invoked the other provisions of the Income Tax Act before the appropriate forum concerned. The Miscellaneous Petition filed under Section 254 has been rejected by the Tribunal on the ground that there is no mistake apparent on the face of the record. It is well established legal principles of law that the mistake apparent is the one which is apparent on the face of it and not the one pointed out by production of fresh materials. This is the long drawn judicial opinion rendered by all the High Courts including the Apex Court. In this Case also the Tribunal rejected the miscellaneous petition on the ground that during the course of hearing of the original appeal, the Revenue failed to produce any evidence that the first notice dated 10.8.1999 was issued and served on the assessee within the period of one year. In the absence of such evidence it was held that the assessment

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

framed was invalid in law. From the record as on the date of order passed by the Tribunal, there was no material available to suggest that first notice was issued on 10.8.1999. Therefore, the Tribunal concluded that there was no mistake apparent from the record to be rectified. The finding so arrived by the Tribunal cannot be characterised as a finding against available material or a finding, which is perverse in nature. We are of the view that the Revenue has miserably failed before the authorities to produce any material to prove their case that the notice has been served on the assessee within the time . Hence, we are of the view that the appeal deserves no entertainment as it involves no question of law . The Tax Case Appeal is dismissed.

krr/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar, Income-Tax Appellate Tribunal, III Floor, Rajaji Bhavan, Besant Nagar, Madras 90 (with records).

2. The Commissioner of Income Tax (Appeals)
Contonment, Tiruchirappalli 1.

3. The Income Tax Officer, Ward -1(2), Pudukkottai

4. The Commissioner of Income Tax, Trichirappalli.

+ 1 cc to Mr. N. Muralikumaran, Advocate SR No. 45538

AD(CO)
SR/22.8.2007

Tax Case (Appeal) No.266 of 2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/